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December 18, 2025

**Via ECF**

Nwamaka Anowi  
Clerk of Court  
United States Court of Appeals for the Fourth Circuit  
1100 East Main Street, Suite 501  
Richmond, Virginia 23219

**RE:** *The Sustainability Institute, et al. v. Donald J. Trump, et al.*, No. 25-1575 (oral argument held October 23, 2025); Rule 28(j) Supplemental Authority

Dear Ms. Anowi:

Plaintiffs-Appellees (“Plaintiffs”) respectfully notify the Court of the en banc orders issued yesterday in *National Treasury Employees Union v. Vought*, No. 25-5091 (D.C. Cir.) (attached as Exhibit 1), and *Climate United Fund v. Citibank, N.A.*, No. 25-5122 (D.C. Cir.) (attached as Exhibit 2).

In this case, the government overreads *Dalton v. Specter*, 511 U.S. 462 (1994), to preclude non-statutory review of constitutional claims alleging violations of the separation of powers. Opening Br. 37–38; *but see* Resp. Br. 14–15, 29–32. After briefing concluded, divided panels of the D.C. Circuit embraced the government’s view of *Dalton* in *National Treasury Employees Union v. Vought*, 149 F.4th 762, 792–93 (D.C. Cir. 2025), and *Climate United Fund v. Citibank, N.A.*, 154 F.4th 809, 826–27 (D.C. Cir. 2025). The panel opinions in *National Treasury Employees Union* and *Climate United Fund* were referenced at oral argument during a discussion of Plaintiffs’ constitutional claims. *See* Hr’g Tr. at 13:14–14:2 (attached as Exhibit 3).

Yesterday, the D.C. Circuit granted rehearing en banc in both cases and vacated the judgments. *See* Ex. 1 at 1 (*National Treasury Employees Union*); Ex. 2 at 1 (*Climate United Fund*).<sup>1</sup> At oral argument in this case, the government suggested this Court follow the D.C. Circuit’s approach to *Dalton*. Ex. 3, Hr’g Tr. at 27:22–24. But the en banc orders issued yesterday indicate the D.C. Circuit’s view is far from settled in the government’s favor. More importantly, the government’s overreading of *Dalton* is wrong on the merits and this Court should reject it. *See* Resp. Br. 14–15, 29–32.

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<sup>1</sup> The D.C. Circuit previously denied rehearing en banc in a third case involving *Dalton*, among other issues. *See* Order, *Global Health Council v. Trump*, No. 25-5097 (D.C. Cir. Aug. 28, 2025) (attached as Exhibit 4); *but see id.* at 8 (Garcia, J., respecting denial of rehearing en banc) (whether plaintiffs may bring constitutional challenges when the Executive Branch refuses to spend appropriated funds is “not only an important question but also a complex one” that “in a future case may warrant the Court’s en banc review”).

Respectfully submitted,

/s/ Kimberley Hunter

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cc: all parties (via CM/ECF)

**CERTIFICATE OF COMPLIANCE**

I certify that this letter complies with the word limit of Federal Rule of Appellate  
Procedure 28(j) because it contains 348 words.

/s/ Kimberley Hunter

Kimberley Hunter  
Southern Environmental Law Center

**CERTIFICATE OF SERVICE**

I certify that on December 18, 2025, a copy of the foregoing document was filed using the Court's CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served electronically.

/s/ Kimberley Hunter

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